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**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No.

2009-160

MARLENE LOREN ROSENWALD BECKER  
a.k.a. MARLENE ROSENWALD BECKER  
a.k.a. MARLENE LOREN ROSENWALD  
3205 McGraw Street  
San Diego, CA 92117

**ACCUSATION**

Registered Nurse License No. 240434  
Public Health Nurse Certificate No. 19607  
Nurse Practitioner Certificate No. 802  
Nurse Practitioner Furnishing Certificate No. 802

Respondent.

Complainant alleges:

**PARTIES**

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

**Registered Nurse License No. 240434**

2. On or about February 28, 1974, the Board issued Registered Nurse License Number 240434 to Marlene Loren Rosenwald, also known as Marlene Loren Rosenwald-Becker and Marlene Rosenwald-Becker ("Respondent"). Respondent's registered nurse license was in

1 full force and effect at all times relevant to the charges brought herein and will expire on  
2 September 30, 2009, unless renewed.

3 **Public Health Nurse Certificate No. 19607**

4 3. On or about May 17, 1974, the Board issued Public Health Nurse  
5 Certificate No. 19607 to Respondent. Respondent's public health nurse certificate was in full  
6 force and effect at all times relevant to the charges brought herein and will expire on September  
7 30, 2009, unless renewed.

8 **Nurse Practitioner Certificate No. 802**

9 4. In or about 1974, the Board issued Nurse Practitioner Certificate No. 802  
10 to Respondent. Respondent's nurse practitioner certificate was in full force and effect at all  
11 times relevant to the charges brought herein and will expire on September 30, 2009, unless  
12 renewed.

13 **Nurse Practitioner Furnishing Certificate No. 802**

14 5. On or about February 25, 1993, the Board issued Nurse Practitioner  
15 Furnishing Certificate No. 802 to Respondent. Respondent's nurse practitioner furnishing  
16 certificate was in full force and effect at all times relevant to the charges brought herein and will  
17 expire on September 30, 2009, unless renewed.

18 **STATUTORY PROVISIONS**

19 6. Business and Professions Code ("Code") section 2750 provides, in  
20 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
21 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
22 2750) of the Nursing Practice Act.

23 7. Code section 2764 provides, in pertinent part, that the expiration of a  
24 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
25 against the licensee or to render a decision imposing discipline on the license. Under Code  
26 section 2811, subdivision (b), the Board may renew an expired license at any time within eight  
27 years after the expiration.

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1           8.       Code section 2761 states, in pertinent part:

2           The board may take disciplinary action against a certified or licensed nurse  
3           or deny an application for a certificate or license for any of the following:

4           (a) Unprofessional conduct, which includes, but is not limited to, the  
5           following:

6           (1) Incompetence, or gross negligence in carrying out usual certified or  
7           licensed nursing functions. . .

8           9.       California Code of Regulations, title 16, section ("Regulation") 1443  
9           states:

10          As used in Section 2761 of the code, 'incompetence' means the lack of  
11          possession of or the failure to exercise that degree of learning, skill, care and  
12          experience ordinarily possessed and exercised by a competent registered nurse as  
13          described in Section 1443.5.

14          10.       Regulation 1443.5 states:

15          A registered nurse shall be considered to be competent when he/she  
16          consistently demonstrates the ability to transfer scientific knowledge from social,  
17          biological and physical sciences in applying the nursing process, as follows:

18          (1) Formulates a nursing diagnosis through observation of the client's  
19          physical condition and behavior, and through interpretation of information  
20          obtained from the client and others, including the health team.

21          (2) Formulates a care plan, in collaboration with the client, which ensures  
22          that direct and indirect nursing care services provide for the client's safety,  
23          comfort, hygiene, and protection, and for disease prevention and restorative  
24          measures.

25          (3) Performs skills essential to the kind of nursing action to be taken,  
26          explains the health treatment to the client and family and teaches the client and  
27          family how to care for the client's health needs.

28          (4) Delegates tasks to subordinates based on the legal scopes of practice  
of the subordinates and on the preparation and capability needed in the tasks to be  
delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the  
client's physical condition and behavior, signs and symptoms of illness, and  
reactions to treatment and through communication with the client and health team  
members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating  
action to improve health care or to change decisions or activities which are against  
the interests or wishes of the client, and by giving the client the opportunity to  
make informed decisions about health care before it is provided.

1 **COST RECOVERY**

2 11. Code section 125.3 provides, in pertinent part, that the Board may request  
3 the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Incompetence)**

8 12. At all times herein mentioned, Respondent was employed as a family  
9 nurse practitioner at the Kaiser Permanente Outpatient Medical Clinic in San Diego, California,  
10 ("Kaiser Clinic").

11 13. On or about December 10, 2003, at approximately 10:30 a.m., Patient A,  
12 27 years of age, presented to Respondent at the Kaiser Clinic for a scheduled appointment.  
13 Patient A's complaints included upper respiratory symptoms, including cough, congestion, and  
14 wheezing for the last three to four days. The past medical history of Patient A included risk  
15 factors of asthma, being a smoker, and having had bronchitis approximately two years prior.

16 14. Respondent is subject to disciplinary action pursuant to Code section  
17 2761, subdivision (a)(1), on the grounds of unprofessional conduct. On or about December 10,  
18 2003, while on duty as a family nurse practitioner at the Kaiser Clinic, Respondent was guilty of  
19 incompetence, within the meaning of Regulation 1443, with regard to the evaluation, treatment,  
20 and disposition of Patient A pursuant to basic nursing criteria and/or the Kaiser Permanente  
21 Standardized Procedures and Protocols for Nurse Practitioners, Certified Nurse Midwives and  
22 Physician Assistants pertaining to asthma patients resulting in Patient A's death, as follows:

23 a. Respondent failed to accomplish diagnostic testing to evaluate why Patient  
24 A's peak expiratory flow ("PEF") or pulmonary expiratory flow rate ("PEFR") did not increase  
25 despite two albuterol nebulizer treatments<sup>1</sup>.

26 \_\_\_\_\_  
27 1. **Albuterol** is a drug, generally used for the treatment of asthma, which relieves and can prevent bronchial  
28 spasms, sudden episodes of breathlessness, and wheezing that make breathing difficult. A **nebulizer** is an  
electronic device that transforms asthma medicine into a very fine mist that will penetrate deeply into the lungs.

- b. Respondent failed to recognize that Patient A was in respiratory distress.
- c. Respondent failed to recognize that Patient A's lack of improvement in objective evaluation measures met the Kaiser criteria for admission.
- d. Respondent failed to evaluate Patient A's respiratory rate or respiratory effort.
- e. Respondent failed to prescribe any steroids for Patient A while she was being treated at the Kaiser Clinic.
- f. Respondent discharged Patient A with a prescription for a tapered dose of steroids instead of a corticosteroid burst.
- g. Respondent failed to document in Patient A's medical record of December 10, 2003, the number of nebulizer treatments given to Patient A; Patient A's respiratory rate or effort; the number of times, or the exact time, that Respondent discussed Patient A's case, including the objective data, with Dr. Butler; and an appropriate description of Patient A's condition.
- h. Patient A later called paramedics after arriving home on December 10, 2003, and reported shortness of breath. Paramedics found Patient A unresponsive and without a pulse, and took her to Kaiser San Diego Medical Center. The physician's impression was listed as: "severe asthma flare with respiratory arrest, pulse less electrical activity and a possibly severe ischemic brain injury." Patient A was comatose throughout her stay at the hospital. Patient A died on December 18, 2003 after life support was withdrawn. The death certificate for Patient A listed the cause of death as: anoxic brain injury, respiratory arrest and asthma.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Unprofessional Conduct)**

15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), in that on or about December 10, 2003, while on duty as a family nurse practitioner at the Kaiser Clinic, Respondent committed acts constituting unprofessional conduct, as set forth in paragraph 14 above.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 240434,  
5 issued to Marlene Loren Rosenwald-Becker, also known as Marlene Rosenwald-Becker and  
6 Marlene Loren Rosenwald;

7 2. Revoking or suspending Public Health Nurse Certificate No. 19607, issued  
8 to Marlene Loren Rosenwald-Becker, also known as Marlene Rosenwald-Becker and Marlene  
9 Loren Rosenwald;


10 3. Revoking or suspending Nurse Practitioner Certificate No. 802, issued to  
11 Marlene Loren Rosenwald-Becker, also known as Marlene Rosenwald-Becker and Marlene  
12 Loren Rosenwald;

13 4. Revoking or suspending Nurse Practitioner Furnishing Certificate No. 802,  
14 issued to Marlene Loren Rosenwald-Becker, also known as Marlene Rosenwald-Becker and  
15 Marlene Loren Rosenwald;

16 5. Ordering Marlene Loren Rosenwald-Becker, also known as Marlene  
17 Rosenwald-Becker and Marlene Loren Rosenwald, to pay the Board of Registered Nursing the  
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
19 Professions Code section 125.3; and

20 6. Taking such other and further action as deemed necessary and proper.  
21

22 DATED: 1, 26, 09

23   
24 RUTH ANN TERRY, M.P.H., R.N.  
25 Executive Officer  
26 Board of Registered Nursing  
27 Department of Consumer Affairs  
28 State of California  
Complainant